

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ZOUNDS HEARING FRANCHISING, LLC
6825 W. Galveston St.
Chandler, Arizona 85226,

and

ZOUNDS HEARING, INC.
6825 W. Galveston St.
Chandler, Arizona 85226,

Plaintiffs,

v.

TARGUM CAPITAL, LLC
131 Columbia Turnpike, Ste. 3D
Florham Park, NJ 07932,

VCV HEARING LABS, LLC
1234 E. Airport Rd.
Safford, AZ 85546,

DAVID RATZKER
59 Westminster Ave.
Bergenfield, NJ 07621,

ADAM ELBAUM
445 Poplar St.
Philadelphia, PA 19123,

VANAZON, LLC
1025 S 1st Ave.
Safford, AZ 85546,

ANGEL WHISPER, LLC
9933 Milano Drive
Trinity, FL 34655,

AUSTIN AND HEIDI VANSKOYK
1982 W. Island Circle
Safford, AZ 85546,

Civil Action No.

ALEXANDER VANSKOYK
1234 E. Airport Rd.
Safford, AZ 85546,

SHALANE VANSKOYK
1234 E. Airport Rd.
Safford, AZ 85546,

DAVE AND CHRISTI CLUFF
1234 E. Airport Rd.
Safford, AZ 85546,

and

KEVIN AND NICOLE SAUNDERS
9933 Milano Drive
Trinity, FL 34655

Defendants.

COMPLAINT

INTRODUCTION

1. Plaintiffs Zounds Hearing Franchising, LLC (“Zounds”) and Zounds Hearing, Inc. (“ZHI”) bring this action against former franchisees Defendants VCV Hearing Labs, LLC (“VCV”), Vanazon, LLC (“Vanazon”), Targum Capital, LLC (“Targum”) and Angel Whisper, LLC (“Angel Whisper”), and their owners Austin and Heidi VanScoyk, Alexander VanScoyk, Shalane VanScoyk, Dave and Christi Cluff, David Ratzker, Adam Elbaum and Kevin and Nicole Saunders who are infringing on Plaintiffs’ trademark rights by using the Zounds trademark in interstate commerce without Plaintiffs’ permission. Plaintiffs also brings this action to protect the goodwill associated with the Zounds trademark, and to protect Zounds’ franchisees who are being harmed as a result of the Defendants’ unauthorized use of the Zounds trademark. Defendants’ use of the Zounds trademark in connection with non-Zounds products and services gives customers

the false impression that Zounds has endorsed Defendants' businesses and the hearing aid products Defendant sell.

THE PARTIES

2. Zounds is an Arizona limited liability company with a principal place of business located at 6825 W. Galveston Street, Chandler, Arizona, 85226. Zounds is the franchisor of the ZOUNDS franchise system. The sole member of Zounds is ZHI which is a Delaware corporation with its principle place of business in Arizona.

3. ZHI is a Delaware corporation with a principal place of business at 6825 W. Galveston Street, Chandler, Arizona 85226. ZHI is engaged in the business of selling certain approved products to Zounds' franchisees, other Zounds locations, and third parties. ZHI owns the trademark "ZOUNDS" which is registered on the Principal Register of the United States Patent and Trademark Office at Registration Nos. 4798675, 3403103 and 3715973 (the "Mark").

4. VCV is an Arizona limited liability company with a principal place of business located at 1234 East Airport Road, Safford, Arizona 85546.

5. Vanazon is an Arizona limited liability company with a principal place of business located at 1025 South 1st Avenue, Safford, Arizona 85546.

6. Targum is a New Jersey limited liability company with a principal place of business located at 131 Columbia Turnpike, Suite 3D, Florham Park, New Jersey 07932.

7. Angel Whisper is a Florida limited liability company with a principal place of business located at 9933 Milano Drive, Trinity, Florida 34655.

8. Austin and Heidi VanScoyk are adult individuals with an address at 1982 West Island Circle, Safford, Arizona 85546.

9. Alexander VanScoyk is an adult individual with an address at 1234 East Airport Road, Safford, Arizona 85546.

10. Shalane VanScoyk is an adult individual with an address at 1234 East Airport Road, Safford, Arizona 85546.

11. Dave and Christi Cluff are adult individuals with an address at 1234 East Airport Road, Safford, Arizona 85546.

12. David Ratzker is an adult individual with an address at 59 Westminster Avenue, Bergenfield, New Jersey 07621.

13. Adam Elbaum is an adult individual with an address at 445 Poplar Street, Philadelphia, Pennsylvania 19123.

14. Kevin and Nicole Saunders are adult individuals with an address at 9933 Milano Drive, Trinity, Florida 34655.

15. Defendants operate at least sixteen businesses selling hearing aids under the trademark Better Sounding Hearing Center (“BSHC”) in Arizona, Florida and New Jersey as well as the website www.bettersounding.com (the “Web Site”).

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1338 in that Plaintiffs’ claims against Defendants are based upon trademark infringement under the Lanham Act, 15 U.S.C. §1051 et seq.

17. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) in that Targum Capital, LLC, Adam Elbaum and David Ratzker do business in in this judicial district and pursuant to 28 U.S.C. §1391(b)(2) in that a substantial part of the events or omissions giving rise to the claims asserted in this Complaint occurred in this judicial district.

FACTUAL ALLEGATIONS

18. Zounds grants franchises for the right to independently own and operate Zounds franchised businesses. Each franchised business is governed by a franchise agreement that Zounds enters into with each franchisee and each franchisee is authorized to use the Mark.

19. ZHI is Zounds' approved supplier for the proprietary line of Zounds-branded hearing aid devices and related accessories. ZHI is the owner of the Mark and has granted a license to Zounds to use and license others to use the Mark.

20. From 2013 to 2014, VCV, Vanazon, Targum and Angel Whisper entered into multiple franchise agreements with Zounds (the "Franchise Agreements"), which were guaranteed by their owners Austin and Heidi VanScoyk, Alexander VanScoyk, Shalane VanScoyk, Dave and Christi Cluff, David Ratzker, Adam Elbaum and Kevin and Nicole Saunders. Pursuant to the terms of the Franchise Agreements, upon termination of the Franchise Agreements, Defendants were required to cease all use of the Mark and prohibited from holding themselves out as associated with Zounds or as a former franchisee of Zounds.

21. Additionally, in 2017, VCV, Vanazon, Targum and Angel Whisper entered into a termination agreement with Zounds, which was guaranteed by their owners Austin and Heidi VanScoyk, Alexander VanScoyk, Shalane VanScoyk, David Ratzker, Adam Elbaum and Kevin and Nicole Saunders (the "Termination Agreement"). Pursuant to the Termination Agreement, VCV, Vanazon, Targum and Angel Whisper agreed that the Franchise Agreements were terminated, agreed to cease use of the Mark and agreed to not identify themselves as former franchisees of Zounds. As a result, upon execution of the Termination Agreement, Defendants' license to use the Mark was terminated.

22. Pursuant to Section 14 of the Termination Agreement, Defendants are required to reimburse Plaintiffs for all attorney's fees and costs incurred in connection with enforcing the terms of the Termination Agreement.

23. Defendants, individually and in concert with one another, are using the Mark in connection with their BSHC locations, including without limitation on the Web Site and in advertising.

24. The Web Site refers to BSHC locations as "our Zounds locations" and directs customers to call the BSHC locations at "1-844-ZOUNDS-1." A copy of the relevant pages from the Web Site are attached as Exhibit "A."

25. The Web Site even includes a picture and biography of Zounds founder Sam Thomasson and his daughter who suffers from hearing loss, further associating the BSHC locations with Zounds. A copy of the relevant page from the Web Site is attached as Exhibit "B."

26. Defendants are also advertising the BSHC locations as "Formerly Zounds," giving the false impression to customers that the BSHC locations are Zounds locations under a new name. A copy of the advertisement is attached as Exhibit "C."

27. Defendants are not authorized to use the Mark in the manner described above.

COUNT I

Trademark Infringement, Unfair Competition and Unfair Trade Practices

28. Plaintiffs incorporates the forgoing averments as if fully set forth herein.

29. Defendants are utilizing and benefiting from the Mark in the operation of their BSHC locations without Plaintiffs' permission and with the knowledge that Plaintiffs have not consented to their use of the Mark.

30. Defendants are willfully trading on Plaintiffs' reputations and are deliberately causing dilution of the Plaintiffs' goodwill for their own benefit.

31. Defendants' use of a telephone number which includes the Mark is also likely to cause confusion as to the sponsorship, affiliation, or authorization by Plaintiffs.

32. Defendants are guilty of trademark infringement pursuant to the Lanham Act, 15 U.S.C. §1051, et seq. Defendants' use of the Mark constitutes a false designation of origin and is likely to cause confusion, mistake or deception as to their BSHC locations being affiliated, connected or associated with Plaintiffs in violation of 15 U.S.C. §1125(a). Defendants' conduct is also a violation of the common law of unfair competition and is an unfair trade practice under common law.

33. ZHI's federal registrations on the Principal Register of the Mark are conclusive evidence of the validity of the Mark and ZHI's ownership of the Mark pursuant to the Lanham Act, 15 U.S.C. § 1115, et seq.

34. As a result of Defendants' actions, Plaintiffs have suffered and will continue to suffer irreparable damage to their business, goodwill, reputation and the strength of the Mark.

35. Defendants' unauthorized and continued use of Mark in connection with the sale and advertising of hearing aid products and services likewise inhibits Zounds' ability to sell franchises in the market in which Defendants operate and causes irreparable injury to Zounds.

36. Plaintiffs have no adequate remedy at law because they cannot be adequately compensated for the deprivation and dilution of the consumer recognition and goodwill built up under the Mark as a result of Defendants' conduct.

37. Plaintiffs immediate and irreparable harm will continue unless Defendants are enjoined from continuing to use of the Mark.

WHEREFORE, Plaintiffs Zounds and ZHI demand judgment in their favor and against Defendants VCV Hearing Labs, LLC, Vanazon, LLC, Targum Capital, LLC, and Angel Whisper, LLC, and their owners Austin and Heidi VanScokyk, Alexander VanScokyk, Shalane VanScokyk, Dave and Christi Cluff, David Ratzker, Adam Elbaum and Kevin and Nicole Saunders, jointly and severally, as follows:

- a. A preliminary and permanent injunction enjoining Defendants and their agents, employees and any person acting in concert with them from using the Mark or any colorable imitation in any manner whatsoever;
- b. An accounting of and judgment for the profits to which Plaintiffs may be entitled;
- c. Treble damages pursuant to 15 U.S.C. § 1117;
- d. An order requiring Defendants to deliver and/or destroy all labels, signs, prints, packages, wrappers, receptacles and advertisements in their possession bearing the word and/or symbol that is the subject of the trademark or trade name violation or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same pursuant to 15 U.S.C. §1118;
- e. Attorney's fees and costs incurred by Plaintiffs in prosecuting this action, in accordance with 15 U.S.C. § 1117 and the Termination Agreement;
- f. Punitive damages;
- g. Pre- and post-judgment interest at the maximum rate allowed under the law; and
- h. Such further relief as this Court deems just and proper.

Respectfully submitted,

FISHER ZUCKER, LLC

Dated: September 22, 2017

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